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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,083	12/31/2003	Keith Rowley	700798.00004	1880

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EXAMINER	
NGUYEN, SON T	
ART UNIT	**PAPER NUMBER**
3643	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,083	ROWLEY ET AL.	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 November 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-54* is/are pending in the application.

4a) Of the above claim(s) *15-41* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14 and 42-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/5/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 42 is objected to because of the following informalities: in line 2, it appears that a phrase is missing because at the end of the line, there is only a "t" which is unclear. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-4,6,7,9,42-45,47,49** are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts et al. (5725630).

For claims 1-4,6,42-45 Roberts et al. teach a method for modifying a plant or plant part such as seeds or young plants comprising the step of treating the plant or plant part with a composition comprising a modified lecithin (col. 4, line 67 and col. 5, line 17) in an amount sufficient to change health, growth or life cycle of the plant or plant part. Roberts et al. further teach the lecithin being soy (col. 5, line 17) or hydroxylated (col. 4, line 67) lecithin.

For claims 7,47, Roberts et al. teach roots and leaves of young plant.

For claims 9,49, Roberts et al. teach treating the young plants, thus, young plants are not harvested, therefore, treating before it is harvested from the plant.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. **Claims 1-4,6-8,10-14,48,50-54,** are rejected under 35 U.S.C. 103(a) as being unpatentable over Staden (NPL "Bulletin of the Sprenger Institute "Brown" in Golden Delicious on form PTO-1449) in view of Roberts et al. (as above).

For claims 1-4,6, Staden teaches a method for modifying a plant or plant part such as an apple fruit comprising the step of treating the plant or plant part with a composition comprising a lecithin (1st paragraph, line 4) in an amount sufficient to change health, growth or life cycle of the plant or plant part. However, Staden is silent about modified lecithin such as soy or hydroxylated lecithin. As mentioned above, Roberts et al. teach modified lecithin such as soy or hydroxylated lecithin (col. 4, line 67 & col. 5, line 17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ modified lecithin such as soy or hydroxylated lecithin as taught by Roberts et al. as the preferred lecithin in the method of Staden in order to create a more potent composition.

For claims 7,8,48, Staden as modified by Roberts et al. (emphasis on Staden) teaches apple, which is a fruit.

For claims 10,50, Staden as modified by Roberts et al. (emphasis on Staden) teaches wherein the plant part is exposed to the composition after it is harvested from the plant (see 2nd paragraph).

For claims 11,51, Staden as modified by Roberts et al. (emphasis on Staden) teaches wherein treating the plant or plant part with the composition is achieved through dipping the plant or plant part into the composition.

For claims 12-14,52-54, Staden as modified by Roberts et al. is silent about wherein the modified lecithin concentration in the composition is from about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ modified lecithin concentration of about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm in the composition of Staden as modified by Roberts et al., since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (more potent) is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

6. **Claims 5,46** are rejected under 35 U.S.C. 103(a) as being unpatentable over Staden (as above) **or** Roberts et al. (as above).

Staden or Roberts et al. is/are silent about the lecithin being acetylated lecithin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ acetylated lecithin as the preferred lecithin in the composition of Staden or Roberts et al., since it has been held to be within the general

skill of a worker in the art to select a known material on the basis of its suitability for the intended use (more potency) as a matter of obvious choice. In re Leshin, 125 USPQ 416.

7. **Claim 12-14,52-54** are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al. (as above).

Roberts et al. are silent about wherein the modified lecithin concentration in the composition is from about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ modified lecithin concentration of about 1 ppm to about 20,000 ppm or about 10 ppm to about 10,000 ppm or about 25 ppm to about 5,000 ppm in the composition of Roberts et al., since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect (more potent) is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

8. Applicant's arguments filed 11/13/06 have been fully considered but they are not persuasive.

Applicant argued that Roberts discloses the use of a dry fertilizer in which modified lecithin acts as a dry carrier to "absorb the liquid spray" for use as a dry fertilizer. Roberts, col. 8, lines 19-20. Roberts does not disclose the use of modified lecithin in solution.

The lecithin is actually in a solution and this solution is added or sprayed to a dry carrier to create the dry fertilizer of Roberts. Cleary from col. 2, lines 45-64, col. 3, lines 20-21, col. 8, lines 5-10,17-22, Roberts teaches that the lecithin is in an aqueous solution and sprayed onto a carrier to make the final product of a dry fertilizer. Note that the actual lecithin used is aqueous because in col. 3, line 20, the list of acids (which includes lecithin) are sprayed on the dry carrier. Clearly this is in a liquid form because how would the lecithin stick to the dry carrier, especially when the dry carrier is listed as talc and clay. Assuming that the lecithin is not in a solution, as alleged by Applicant, and one choose talc as the preferred dry carrier, how would the lecithin stick to the talc since we all know that talc is very powdery, especially when Roberts state that the talc is "a dry carrier"? Note also in col. 8, lines 17-21, Roberts teaches the liquid ingredients, which these liquid ingredients are listed in cols. 3-7 to include lecithin, to make the dry fertilizer so definitely the lecithin is in solution. And if that isn't enough hint that the lecithin is in a solution, claim 1 of Roberts states (note the underlined item), "A method of fertilizing a plant comprising applying a liquid comprising C.sub.1 to about a C.sub.6 alkanoic acid or a salt thereof onto a dry carrier to form a dry granule and placing said granule into the ground in the vicinity of the plant's roots, wherein said dry carrier is not a fertilizer composition containing nitrogenous, phosphatic and potash fertilizers." From this claim, clearly lecithin is in a solution because lecithin is one of the alkanoic acid or salts listed in cols. 3-7.

Applicant argued that there is no motivation to combine Staden in view of Roberts et al. for the use of modified lecithin.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ modified lecithin such as soy or hydroxylated lecithin as taught by Roberts et al. as the preferred lecithin in the method of Staden in order to create a more potent composition. Note that Staden does teach lecithin but just not a preferred one such as modified lecithin, soy lecithin, sunflower lecithin, etc. To choose any preferred lecithin would definitely be obvious to one of ordinary skill in the art for his/her intended use, i.e. more potent composition. In addition, Applicant has not provided any unexpected result as to why modified lecithin produces a better unexpected result than any other lecithin. As a matter of fact, Applicant's disclosure lists various types of lecithin for one to choose from without any criticality or unexpected result, thus, it is believe that choosing the various types of lecithin would be obvious based on the intended use of the user. Furthermore, even if so proven unexpected result of Applicant's modified lecithin, Roberts already teaches the modified lecithin as

preferred by Applicant so one would conclude that Applicant's unexpected result of the modified lecithin came from the teaching of Roberts.

Conclusion

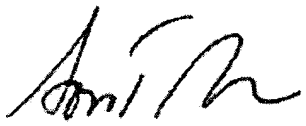
9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Primary Examiner
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